

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>MELVIN BROWN,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Civil No. 06-130-P-S</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>Criminal No. 03-114-P-S</b>
	)	
<b>Defendant.</b>	)	

**ORDER AFFIRMING THE  
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

No objections having been filed to the Magistrate Judge's December 13, 2006 Recommended Decision (Docket No. 11), the Recommended Decision is hereby AFFIRMED. In reaching this decision and having conducted the underlying criminal trial, the Court has independently considered Brown's claim that he received ineffective assistance of counsel because his trial counsel failed to inform him that the Government had elected to proceed on only one of the three charged counts. Both at his sentencing and in the pending petition, Brown has asserted that he would have pled guilty to this single count (Count III) and thereby avoided trial and been eligible for an acceptance of responsibility adjustment under the Sentencing Guidelines. Despite his post-trial assertions, this Court is satisfied that Brown was actually aware of the Government's decision to only proceed on Count III at the very beginning of his trial based on the Court's instructions. Similarly, Brown was aware of his ability to plead guilty to Count III regardless of what course of action the Government took with respect to Counts I & II. Nonetheless, he proceeded to trial. Therefore, the Court is ultimately satisfied that Brown did not qualify for an acceptance of responsibility adjustment pursuant to U.S.S.G. § 3E1.1 and that this Court ultimately would have imposed an identical sentence even if Brown's trial counsel had informed him of the Government's decision to drop Counts I & II, which was announced on the

morning of trial.

Accordingly, it is ORDERED that the United States' Motion to Dismiss (Docket # 10) is GRANTED. The 28 U.S.C. § 2255 Motion (Docket # 1) is DENIED.

SO ORDERED.

/s/ George Z. Singal  
Chief United States District Judge

Dated this 9<sup>th</sup> day of January 2007.